

FAIR EMPLOYMENT & HOUSING COMMISSION
PREGNANCY REGULATIONS
INITIAL STATEMENT OF REASONS

§ 7291.2 Definitions

The amended definitions in these proposed regulations interpret key terms or concepts used in Government Code sections 12926, 12940, 12943, 12944 and 12945 to provide clarity for employers seeking to comply with the Fair Employment and Housing Act's provisions covering pregnancy, childbirth or related medical conditions, including recent amendments to FEHA in 1999 (Stats. 1999, c. 591 (A.B. 1670, § 9) and 2004 (Stats. 2004, c. 647 (A.B. 2870, § 5).

§ 7291.2 ~~(a)~~ “Accrued leave” is a term that is no longer used in Government Code section 12945 after 2004 amendments and thus, the definition has been eliminated from these amended regulations. (Stats. 2004, c. 647 (A.B. 2870), § 5.)

§ 7291.2 ~~(b)~~(a) “Affected by pregnancy” now includes reasonable accommodation to comply with A.B. 1670. (Stats. 1999, c. 591 (A.B. 1670), § 9.)

§ 7291.2 ~~(c)~~(b) “Because of pregnancy.” Wordsmithing only.

§ 7291.2 ~~(d)~~ “Certification.” The definition for “certification” has been changed to “medical certification” to conform to the term used by the Family and Medical Leave Act of 1993 (29 U.S.C. 2601, et seq.) and its implementing regulations (29 C.F.R. § 825.100, et seq.) and thus, has been moved to later in the definitions section.

§ 7291.2 ~~(e)~~(c) “CFRA.” The CFRA regulations section reference has been added.

§ 7291.2 ~~(f)~~(d) “Covered entity.” This definition is unchanged.

§ 7291.2 ~~(g)~~(e) “Disabled by pregnancy.” Throughout these regulations, the noun “woman” has been replaced with “applicant” and/or “employee” where applicable. This definition has been given more clarity by specifically naming conditions which would constitute “disabled by pregnancy,” such as pre- or post-natal medical care and post-partum depression.

§ 7291.2 ~~(h)~~(f) “Employer.” This definition was amended to conform to 2004 amendments to section 12945 (Stats. 2004, c. 647 (A.B. 2870, § 5) which eliminated distinctions between “Title VII employers” (those employers with 15 or more employees who would be covered by the federal Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (42 U.S.C. § 2000e, et seq.) and “non-Title VII employers” (those employers with five to 14 employees, covered only by FEHA).

§ 7291.2 ~~(i)~~(g) “Employment in the same position.” This definition has been amended to include reasonable accommodation, specifically added by the Legislature in 1999. (Stats. 1999, c. 591 (A.B. 1670), § 9.)

§ 7291.2 ~~(j)~~(h) “Employment in a comparable position.” This definition has been amended to include reasonable accommodation. (Stats. 1999, c. 591 (A.B. 1670), § 9.)

§ 7291.2 ~~(k)~~(i) “FMLA.” “CFR” has been spelled out as “Code of Federal Regulations.” The “issued January 6, 1995” reference was eliminated as the Department of Labor is in the process of amending its regulations.

§ 7291.2 ~~(4)~~(j) “Four months” is an ambiguous term, because months in the calendar do not have an even number of days. This is not a problem if the leave is taken in one continuous period of time. However, if leave is taken sporadically, it is more useful to know the number of days in four months to calculate an employee’s total leave entitlement. Four months can be viewed as one-third of a calendar year, and one-third of 365 days is 122 days or 17.3 weeks (365 days ÷ 3 = 121.66 days, or 122 days; 52 weeks ÷ 3 = 17.3 weeks).

§ 7291.2 ~~(m)~~ (k) **subds. (1)(2) & (3)** “Health Care Provider.” These definitions have been simplified and use language from the Family and Medical Leave Act of 1993 (FMLA)(Pub. Law 103-3; 29 U.S.C. § 2601, et seq.) regulations (See 29 C.F.R. § 825.800, “health care provider.”).

§ 7291.2 ~~(n)~~ “Normal Pregnancy.” Since 2004, this term, “normal pregnancy,” is no longer used in section 12945 and thus, has been eliminated. (Stats. 2004, c. 647 (A.B. 2870), § 5.)

§ 7291.2 (l) “Intermittent Leave.” The current regulations use the term “intermittent leave” but do not define it. This definition follows FMLA’s “intermittent leave” definition (29 C.F.R. § 825.800), which states:

“Intermittent leave” means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

§ 7291.2 (m) “Medical certification.” This term was previously defined under “certification.”

§ 7291.2 ~~(o)~~ (n) “Pregnancy disability leave.” No changes.

§ 7291.2 (o) “Reasonable accommodation.” This is a new definition, as the right to be “reasonably accommodated” was added in 1999 (Stats. 1999, c. 591 (A.B. 1670), § 9). The definition for “reasonable accommodation” roughly follows the definition of “reasonable accommodation” for disability found at section 12926, subdivision (n), modified for the kinds of reasonable accommodation needed by women disabled by pregnancy, childbirth or related medical conditions.

§ 7291.2 (p) “Reduced leave schedule.” In the current regulations, this term is used but not defined. This definition follows FMLA’s “reduced leave schedule” definition (29 C.F.R. § 825.800), which states:

“Reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday of an employee.

§ 7291.2 (p) (q) “Related medical condition.” This definition has been given more clarity by specifically naming conditions which would constitute a “related medical condition,” such as stillbirth and post-partum depression.

§ 7291.2 (q)(p) “Transfer.” This definition eliminates the tautology defining “transfer” as “the transfer” and provides more clarity to this “transfer.”

Reference: This reference section adds the two bills which have altered requirements affecting pregnancy: Stats. 1999, c. 591 (A.B. 1670) and Stats. 2004, c. 647 (A.B. 2870).

~~§ 7291.3 Prohibition Against Harassment~~

This section is consolidated under the “Responsibilities of Employers” section below at § 7291.5.

§ 7291.3 No Eligibility Requirements

Section 7291.3 emphasizes, in contrast to the requirements to take a leave under the California Family Rights Act, that there are no eligibility requirements to take a pregnancy disability leave under FEHA.

§ 7291.4 Responsibilities of Covered Entities Other than Employers

This section has been revised to reflect the correct sections of the FEHA.

§ 7291.5 Responsibilities of Employers

Pregnancy is explicitly covered in the definition of “sex,” at section 12926, subdivision (p), so this prefatory language is not necessary.

(a)(2) “refuse to select”: All distinctions between Title VII and non-Title VII employers were eliminated in section 12945 in 2004 legislation (Stats. 2004, c. 647 (A.B. 2870, § 5)), and thus, are also eliminated in these revised pregnancy regulations. (Stats. 2004, c. 647 (A.B. 2870), § 5.)

(a)(8) “retaliate”: Reasonable accommodation was added to Government Code section 12945 in 1999. (Stats. 1999, c. 591 (A.B. 1670, § 9).)

(a)(9) “refuse to provide reasonable accommodation” This definition conforms to the current section 12945, subdivisions (b)(1) and (b)(2), which places no qualifier on an employer’s

obligation to reasonably accommodate a pregnant employee. (Stats. 1999, c. 591 (A.B. 1670, § 9).)

~~(e) “Training Programs Leading to Promotion.”~~ This exception no longer exists in section 12945 and thus were eliminated.

~~(d) “Provision of Medical Benefits.”~~ This exception no longer exists in section 12945 and thus were eliminated.

References: New legislative references added.

§ 7291.6 Reasonable Accommodation

This section is new, as prior to 1999, Government Code section 12945 did not explicitly require an employer to provide reasonable accommodation. (Stats. 1999, c. 591 (A.B. 1670, § 9).)

(a)(1) “employee’s request”: This requirement is specified at Government Code section 12945, subdivision (b)(1).

(a)(2) “undue hardship”: This provision tracks the reasonable accommodation provision for disability, set forth at Government Code section 12945, subdivision (a).

(b) independent right to pregnancy disability leave: This section gives employers guidance that forms of reasonable accommodation that provide for time off from work, such as intermittent leave or a reduced work schedule would count towards an employee’s four months of leave entitlement.

§ 7291.6 § 7291.7 Transfer

(a)(1) “employer with a transfer policy”: This section follows the language of Government Code section 12945, subdivision (b)(1). (Stats. 1999, c. 591 (A.B. 1670, § 9).)

(a)(2)(B) “transfer can be reasonably effected”: Wordsmithing changes only.

(c) “Transfer to Accommodate Intermittent Leave or a Reduced Work Schedule.” The requirements for equivalent rate of pay, benefits, etc., is taken from the identical provision of the FMLA regulations, at 29 C.F.R. § 825.204, subdivision (c), and would apply to a FMLA-eligible pregnant employees. Section 825.204 provides:

825.204: May an Employer Transfer an Employee to an “Alternative Position” in Order To Accommodate Intermittent Leave or a Reduced Leave Schedule?

.....

(c) The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits of an existing alternative position, so

as to make them equivalent to the pay and benefits of the employee's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary.

(d) "Right to Reinstatement After Transfer." Wordsmithing only.

(e) "No Eligibility Requirement." This is now covered at section 7291.3.

Reference: The reference to *DFEH v. Save Mart* (1992) FEHC Dec. No. 92-01 was deleted, as its holding that the FEHA did not require an employer to reasonably accommodate a pregnant employee was overturned by 1999 FEHA amendments which now require an employer to provide reasonable accommodation to a pregnant employee. (Stats. 1999, c. 591 (A.B. 1670, § 9).)

~~§ 7291.7~~ § 7291.8 Pregnancy Disability Leave

(a)(1) "four month leave": These revisions give employers more guidance on what "four months" means. Numerous examples are given below.

(a)(3) Amount of leave if intermittent: This section gives employers and employees guidance on the effects of intermittent leave or a reduced work schedule for full-time and part-time employees.

(b) "Employers With More General Leave Policies." Wordsmithing changes which do not require the reader to cross-reference another section of these regulations.

(e) "No Eligibility Requirement." This is covered now at section 7291.3.

(c) "Denial of Leave is Unlawful Employment Practice." This provision replaces the old section 7291.8.

Reference: In *Cal. Federal Sav. & Loan Ass'n v. Guerra* (1987) 479 U.S. 272, the United States Supreme Court upheld the constitutionality of California's pregnancy leave statute granting women disabled by pregnancy a disability leave of up to four months. (479 U.S. at p. 289.)

~~§ 7291.8~~ Denial of Leave

This section is included now into sections 7291.8 above and 7291.9 below.

§ 7291.9 Right to Reinstatement from Pregnancy Disability Leave

(a) "Guarantee of Reinstatement": Changes to the first two sentences are wordsmithing only. Changes to the last sentence clarify that employers are not required to give myriad guarantees of reinstatement for multiple leave periods.

(b)(1) “By the date agreed upon” eliminates any remaining ambiguities about the date of reinstatement.

(b)(2) “Change in Date of Reinstatement:” The change in language focuses on giving the employer guidance on what is required to do, rather than on how a plaintiff could prove a violation of the FEHA.

(c) “Employment Would Have Ceased.” This additional language telegraphs what kinds of defenses are permissible.

(c)(1) “Right to Reinstatement to the Same Position.” The additional sentence, “This is true even if the employer has given the employee a written guarantee of reinstatement.” clarifies that a written reinstatement guarantee does not immunize an employee on pregnancy disability leave from non-pregnancy-related business reasons for her employer failing to return her to her job.

(c)(3) Employee Laid Off: This paragraph was added to track comparable language under the CFRA regulations at Cal. Code Regs., tit. 2, § 7297.2, subd. (c)(1)(A), which tracked FMLA regulations at 29 C.F.R. § 825.216, subd. (a)(1). Disability because of pregnancy is a “serious health condition” under FMLA.

(d) Right to Reinstatement to Job if Pregnancy Disability Leave Exceeds Four Months: The last sentence was added to clarify that employers and employees are always able to agree to more pregnancy disability leave and a late reinstatement.

Reference: The year for the *Cal. Fed.* decision has been added.

~~§ 7291.10~~ This is now at section 7291.15.

~~§ 7291.11~~ 7291.10 Terms of Pregnancy Disability Leave

(a) Paid Leave: The first sentence adds the provision from current section 7291.10, subdivision (a)(1), below. The second sentence gives employees information that they may be entitled to state disability insurance and should check with EDD for details. The Commission receives many questions from employers and employees about this issue.

~~**(a)(1)**~~ Pay exceptions for non-Title VII employers: This section was eliminated because 2004 amendments omitted the pay exceptions for non-Title VII employers. (Stats. 2004, c. 647 (A.B. 2870), § 5.)

(b)(2) Vacation Time: Wordsmithing changes only.

(c) Other Benefits and Seniority Accrual: Wordsmithing changes only.

(c)(2) Seniority Upon Return: The “for purposes of” clause was considered unnecessary and thus, was eliminated.

(d) Employee Status: “Other qualifying provisions” was deemed more descriptive than “et cetera.”

~~§ 7291.12~~ **§ 7291.11** Relationship Between Pregnancy Leave and FMLA Leave

(b) FMLA Coverage: This revision refers a reader to FMLA’s regulations for guidance on taking a FMLA leave.

(c) Employer Obligation Under FMLA to Continue Group Health Plan Benefits: As pregnancy is covered as a “serious health condition” under FMLA, FMLA-eligible employees taking a pregnancy disability leave (PDL) will likely qualify also to take a FMLA leave, which will run concurrently with their PDL. Thus, it is useful to know that employers must continue to provide health benefits during the part of their leave covered by FMLA.

~~§ 7291.13~~ **§ 7291.12**

(c) CFRA Leave After Pregnancy Disability Leave: The deleted language is given below at (c)(1) as a separate subparagraph.

(c)(2) Pregnancy disability leave exceeded: These revised regulations attempt to minimize the need for cross-referencing other sections of the regulations.

(d) Maximum Entitlement: Wordsmithing changes and more specific calculation of the amount of time that a woman may be off work.

~~(e)~~ CFRA Coverage: Provisions about CFRA and whether eligible CFRA employees are the same as eligible FMLA employees are left to the CFRA regulations.

~~§ 7291.14~~ — Retaliation

The duty not to retaliate is now covered at section 7281.4, “Responsibilities of Employers.”

~~§ 7291.15~~ **§ 7291.13** Remedies

Renumbering only.

~~§ 7291.16~~ Notice of Right to Request Pregnancy Disability Leave or Transfer

§ 7291.14 Employer Notice to Employees of Rights and Obligations for Reasonable Accommodation, etc.

~~(a)~~ Employers to Post Notice

~~(b)~~ Employers to Give Notice

(a) Employers to Provide Reasonable Advance Notice Advising Employees Affected by Pregnancy of Their FEHA Rights and Obligations

This section has been rearranged and renumbered from the current sections 7291.10, subdivision (a)(5) and 7291.16. This revised consolidated section gives guidance to employers on their obligations to their employees regarding their rights and obligations for reasonable accommodation, to transfer or to take pregnancy disability leave. It conforms, where possible, with new proposed notice requirements used in the FMLA regulations. (See 29 C.F.R. § 825.300.)

(b) Content of Employer’s Reasonable Advance Notice: This provision gives employers guidance on what information should be given to employees for them to have “reasonable advance notice.”

~~**(e)** Non-English Speaking Workforce~~ This provision is now covered below at new section 7291.14, subdivision (d)(4).

(c) Consequences of Employer Notice Requirement: This language was formerly at old section 7291.10, subdivision (a)(5).

(d)(1) Electronic posting: This follows proposed new FMLA regulations, at 29 C.F.R. § 825.300, subdivision (a)(1).)

(d)(2) Electronic distribution: This follows proposed new FMLA regulations, at 29 C.F.R. § 825.300, subd. (a)(3).)

(d)(3) Copy of notice: This requirement loosely follows 29 C.F.R. § 825.300, subdivision (b).).

(d)(4) Non-English Speaking Workforce: This requirement loosely follows 29 C.F.R. § 825.300, subdivision (a)(4).).

~~**(d)**~~ **(e)** “Notice A” Wordsmithing changes.

~~**(e)**~~ **(f)** “Notice B” Wordsmithing changes.

~~“**Notice A**”~~ The Commission has substantially rewritten its “Notice A,” as explained below, to reflect changes in these regulations.

“Notice A” This revised notice, currently at section 7291.16, adds reasonable accommodation and spells out an employer’s obligation to give notice to employees about their rights to take leave, to transfer, or otherwise to be reasonable accommodated and tells employees about their obligation to give their employers reasonable notice of their need for leave/transfer/reasonable accommodation.

“Notice B” is currently at section 7291.16. The revised “Notice B” follows clarifications given elsewhere in the regulations on the specific amount of time covered by four months and gives

examples of specific medical conditions covered by pregnancy, childbirth and related medical conditions.

The revised “Notice B” references the newly created medical certification form, below at section 7291.15, subdivision (e).

The added last paragraph gives employees information on where they may seek more information from DFEH.

§ 7291.10 § 7291.15 Employee Requests for Reasonable Accommodation, Transfer or Pregnancy Disability Leave: Advance Notice; Medical Certification; Employer Response

“Request for reasonable accommodation” has been added to the preamble language to conform to 1999 amendments. (Stats. 1999, c. 591 (A.B. 1670), § 9.)

(a)(1) “Where practicable, the anticipated timing and duration of the reasonable accommodation, transfer or pregnancy disability leave” language gives employers information which will make it easier to plan for the reasonable accommodation, transfer or PDL.

(a)(2) 30 Days Advance Notice: Wordsmithing and reasonable accommodation was added.

(a)(3) When 30 Days is Not Practicable: Wordsmithing and reasonable accommodation was added.

~~(a)(5)~~ Employer Obligation to Inform Employees of Notice Requirement: This provision is now included above at new section 7291.14, subdivision (c).

~~(a)(6)~~ (a)(5) Employer Response to Reasonable Accommodation, Transfer, or Pregnancy Disability Leave Request: Wordsmithing and reasonable accommodation was added.

(a)(6) Consequences for Employee Who Fails to Give Her Employer Adequate Advance Notice of Her Need for Reasonable Accommodation or Transfer: This provision follows language from the FMLA proposed regulations, see 29 C.F.R. § 825.304.

(b) Medical Certification: Reasonable accommodation was added to conform to 1999 amendments. (Stats. 1999, c. 591 (A.B. 1670), § 9.)

(c)(1) Foreseeable reasonable accommodation: The current regulations do not specify the consequences for the employee of failing to give her employer adequate advance notice for transfer or reasonable accommodation. This section follows language from the FMLA regulations at § 825.304, subsection (b).

(e) Medical Certification Form: The Commission added a medical certification form, similar to one used for CFRA leaves, to assist employers and employees to obtain relevant medical information from employees’ health care providers.

NECESSITY.

The Commission amended its regulations on pregnancy:

1. to conform to statutory changes to the Fair Employment and Housing Act enacted in 1999 and 2004. The 1999 amendments (Stats. 1999, c. 591 (A.B. 1670, § 9) added a requirement that employers reasonably accommodate their employees affected by pregnancy, childbirth or related medical conditions. (Gov. Code § 12945, subd. (b)(1).) The 2004 amendments (Stats. 2004, c. 647 (A.B. 2870, § 5) eliminated exceptions in requirements for employers with five to 14 employees.
2. to provide greater clarity in the language of the regulations.
3. to give greater guidance to employers on notices to be given employees about their rights to transfer to less strenuous or hazardous jobs or duties or to take a pregnancy disability leave or to provide reasonable accommodation.
4. to give greater guidance to employees about their obligations to give employers notice of the need for reasonable accommodation, transfer or leave.
5. to provide an optional medical certification form to assist employers and employees to obtain necessary information from employees' health care providers.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Commission relied upon all bill analyses for both 1999 and 2004 legislation amending the FEHA regarding pregnancy: (Stats. 1999, c. 591 (A.B. 1670, § 9) and Stats. 2004, c. 647 (A.B. 2870, § 5).) The Commission also relied on proposed rules amending the Family and Medical Leave Act of 1993 (FMLA) (Pub. Law 103-3) (29 U.S.C. 2601, et seq.) found at 73 C.F.R. 28 (Feb. 11, 2008) (pages 7960-7961 (Table of Contents) and 7978-7986 (Notice Provisions)) regarding notice requirements for employers and employees.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission has not considered other alternatives to its amended regulations. The Commission invites comments from the public regarding suggested alternatives.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The Commission knows of no reasonable alternatives to the proposed regulations that would lessen any adverse impact on small business. The Commission invites comments from the public regarding suggested alternatives.

The 2004 amendments to the FEHA eliminated exceptions provided for small employers (with 5 to 14 employees and thus not covered by Title VII) to limit: 1) leave for "normal" pregnancy; 2) training programs for pregnant employees under certain circumstances; and 3) medical benefits for pregnancy. Although eliminating these exceptions arguably placed a greater burden

on small employers, the Legislature noted that these exceptions contradicted the general “sex” discrimination provisions of FEHA, which require that all employers with five or more employees treat their employees affected by pregnancy, childbirth or related medical conditions the same as other employees in hiring, firing, promotions, training, and in other terms and conditions of employment. In addition, these three exceptions also contradicted then Government Code section 12945, subdivision (d) [now Government Code section 12945, subdivision (c)], which provides that section 12945 “shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or medical conditions related to pregnancy or childbirth under any other provisions of this part, including subdivision (a) of Section 12940” (the general FEHA prohibition against “sex” discrimination, which includes discrimination on the basis of pregnancy). (Assem. Com. on Labor & Empl. on Assem. Bill No. 2870 (2003-2004), p. 4.)

Legislative analysis of AB 1670 (the bill requiring employers to provide reasonable accommodations to pregnant employees) indicates that the Legislature “intended to permit employers to allow pregnant employees to remain in their current positions for longer time periods without the need for transfer, while assuring that less costly and disruptive steps (such as simply permitting more frequent restroom breaks or rest periods) are taken for pregnant employees who do not want or need to be transferred from their current positions.” (Assem. Com. on Judiciary, Rep. on Assem. Bill No. 1670 (1999-2000) as amended May 6, 1999, p. 10-11.) Therefore, the Legislature’s understanding was that the cost of accommodations provided for by the statute would be de minimus. The Commission’s regulations follow this guidance. Furthermore, the Commission’s regulations provide that any accommodation that would impose an undue hardship on an employer would not be required by the regulations. (Gov. Code §12940 subd. (m); proposed amended Cal. Code Regs, tit. 2, § 7291.6, subd. (a)(2).)

All provisions in the Fair Employment and Housing Act covering pregnancy, childbirth or related medical conditions now cover employers with five or more employees, except for harassment where an employer with one or more employees is covered. The Commission’s fiscal analysis of the costs to comply with the amended regulations adding a reasonable accommodation requirement found that the overall cost to a California business to accommodate a pregnant employee is estimated to be approximately \$500, covering the estimated leave time necessary for a pregnant employee to take an average of 9-12 prenatal visits per pregnancy. This cost is offset by benefits which include, with reasonable accommodation, the ability of a pregnant woman to work longer through her pregnancy, reducing turnover costs, health care costs, and premature labor. Because the Commission’s estimate of these expenses was minimal, it did not consider any other alternative.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

The Legislature’s assumption that minor accommodations for employees affected by pregnancy or related medical conditions short of transfer or leave would be of no or little cost to employees is consistent with research conducted by the Department of Labor, Office of Disability Policy Job Accommodation Network (JAN) about the types of accommodations needed for a broad

spectrum of disabled employees in the work place.¹ A JAN 2004-2006 survey of 1,182 employers found that 46% of all job accommodations for persons with disabilities came at no cost to the employer.² In general, pregnancy accommodations can be expected to be less costly than average disability accommodations because no special equipment (other than a stool) is usually needed to accommodate a pregnant woman and the accommodation is needed for a short, finite period of time. The Commission's proposed pregnancy regulations amendments follow legislative changes to permit employers to implement minor accommodations that are less costly than transferring an employee or requiring an employee to take a pregnancy disability leave.

¹ Job Accommodation Network, "Workplace Accommodations: Low Cost, High Impact," p. 2 *available at* <http://www.jan.wvu.edu/media/LowCostHighImpact.pdf> (last visited June 18, 2008).

² *Id.*